

ELMER J. PARKER

IBLA 81-491

Decided January 28, 1982

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM 36334 for failure to pay advance annual rental timely.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases:
First-Qualified Applicant--Oil and Gas Leases: Rentals

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit, within 15 days after notice, payment of the advance rental identifying the lease account to which it is to be applied as prescribed by 43 CFR 3112.4-1 (1979), disqualification is automatic, and the right of the next drawee to receive first consideration attaches.

APPEARANCES: Terry P. Pugh, Esq., Columbus, Ohio, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Elmer J. Parker has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated February 11, 1981, rejecting his noncompetitive oil and gas lease offer, NM 36334. Parker's drawing entry card (DEC) was drawn with first priority for parcel NM 498 at a simultaneous oil and gas lease drawing held on March 13, 1979. BLM rejected appellant's lease offer because, as the BLM decision stated:

The telegraphic money order you submitted on April 4, 1979, for \$40.00, did not contain any indication or reference number by parcel number or serial number as to where the \$40.00 should be applied. Therefore, the \$40.00 was

credited to your declining account by the Cashier's Office, and your offer to lease was automatically disqualified April 10, 1979. (Regulations 43 CFR 3112.4-1.)

The decision recited that a refund of the payment had been initiated.

In his statement of reasons for appeal, appellant acknowledges the fact that no serial number or parcel number was imprinted on his money order, but alleges BLM had a duty to inquire by telephone of appellant where the funds should be applied rather than simply disqualifying his lease.

The record indicates that BLM issued a notice of rental due to appellant dated March 23, 1979, which was received by appellant on March 26, 1979. By telegraphic money order dated April 4, 1979, appellant submitted the required \$40 rental payment. However, appellant's money order did not identify the oil and gas lease offer to which the sum should be applied. As a result, BLM was not able to credit rental payment to the lease offer in issue within the 15 days required by the regulation. Indeed, BLM was not aware until more than a year later, after receipt of appellant's inquiry of May 29, 1980, that the telegraphic money order received was to be applied to the lease offer in issue. Consequently, the lease was issued effective July 1, 1979, to the drawee receiving second priority who had paid the advance rental timely.

[1] BLM properly rejected appellant's offer. The requirements of 43 CFR 3112.4-1 (1979) 1/ are clear, and the penalty for failing to meet them is explicit:

Rental must be received in the proper office of the Bureau of Land Management within fifteen (15) days from the date of receipt of notice that such payment is due. The drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease, and consideration will be given to the entry of the drawee having the next highest priority in the drawing.

This requirement is strictly enforced by the Department. William H. Bevis, 52 IBLA 125 (1981). While appellant's money order, without the lease number, was received prior to the due date, his failure to indicate the purpose of the check precluded the Bureau from applying it as rental for a particular lease. It is the responsibility

1/ The regulation establishing the time limitation for payment of the first-year annual rental was revised effective June 16, 1980, 45 FR 35164 (May 23, 1980), subsequent to the events at issue in this case.

of the lessee to see that any check tendered for annual rental is so identified that the appropriate State Office can credit the payment to the proper lease account. S. Delos Champaign, 37 IBLA 377 (1978); Pacific Transmission Supply Co., 35 IBLA 297 (1978). The offeror or lessee cannot place BLM in a position of having to guess that party's intention with respect to oil and gas lease rental payments and such a party bears the consequences of the ambiguity in his conduct. See Wilfred Plomis, 51 IBLA 125 (1980). The reasonableness of this requirement is readily recognized when it is understood that many parties have numerous lease offers, lease accounts, and/or other types of accounts requiring periodic timely payment of fees to BLM pending simultaneously. The adverse consequences which might result from application of an unidentified payment to the wrong account and thus, for example, extending the term of a lease which lessee intended to terminate while allowing to terminate a lease which lessee intended to maintain in good standing, are obvious. The enormous volume of lease offers and lease accounts handled by BLM on a continuing basis precludes the luxury of telephoning the remitter of a fee to ascertain the intent as to its application. The lease offer was properly rejected upon appellant's failure to make timely payment of the rental which identified the account to which it was to be applied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

